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FOCUS



ACC Greater Philadelphia Member Named Philadelphia VIP Member of the Month

Scott Leventhal

Anyone would be lucky to have Scott Leventhal in their corner.

With three decades of experience negotiating contracts for multinational corporations, he knows how to fight for his clients' interests. He happily retired in 2019 but knew he wouldn't stay out of the ring for long: "I loved making deals," he explains. "This may be the most damning thing I can say about myself, but I find contracts and contract negotiating exciting." Now, Scott's VIP clients benefit from his years of expertise, and Scott himself enjoys a wholly new kind of legal engagement.

Scott spent most of his career negotiating sales contracts for West Pharmaceutical Services, an Exton, PA-based global supplier of packaging components to pharmaceutical companies. The work was exciting and exhausting. "Pharma buyers are aggressive. I traveled around the world and was beaten up a lot," he recalls. "But it was fun pushing back – and closing good deals."

Since taking his first VIP case in 2019, Scott has consistently brought the same energy to his pro bono cases. While the work is substantively similar to his job at West, his clients – a small accounting shop, a local travel agency, and a neigh-

borhood nonprofit – couldn't be more different.

"My clients have a sense of ownership and investment you'd never see at a large enterprise. It's personal for them."

It is indeed personal for VIP's nonprofit and small business clients, who have no budget for legal services. Such organizations regularly confront a difficult choice: pay for pricey legal help or accept the risk of proceeding on their own. Volunteers like Scott can alleviate these Philadelphians' fears of losing their life's work to legal challenges.

As Scott explains, his clients aren't the only ones benefiting from VIP's services. He finds his work at VIP just as exciting as his continent-hopping career at West. "These people really want to accomplish their mission, not just because it's lucrative, but because it means everything to them," he says. "It's thrilling to be a part of that."

While Scott praises VIP (the only organization in Philadelphia that provides dedicated volunteer legal services to small businesses and nonprofits) for its resources and helpful staff, the true stars here are Scott and his fellow volunteer attorneys. As Philadelphia's small enterprises buckle under the weight of the current economic crisis, Scott encourages Philadelphia attorneys to join him:

"In my experience, the projects are consistently rewarding and the time commitment is much less than one might fear. Helping these small organizations makes the practice of law more meaningful and more real."

Philadelphia VIP provides pro bono legal services to individuals, small businesses, and nonprofits with civil legal issues in four service areas, each encompassing multiple areas of substantive law. Consistent with their mission of leveraging the powerful resources of the community to provide free, high-quality legal services, their programs are designed to meet significant legal needs that otherwise would go unaddressed.

Philly VIP has just launched a new service in response to COVID-19's impact on small businesses and nonprofits. In place of their usual in-person clinics, VIP is now facilitating 1-hour virtual consultations between volunteer attorneys and clients. Volunteers will be individually matched with clients on a rolling basis to provide counsel & advice either within their current areas of practice or regarding new legislation and relief efforts directly related to COVID-19. Once a client is selected, volunteers can schedule the time and method of their consultation at their convenience. Volunteers have the option to either limit their engagement with the client to that initial conversation, or continue to work on the client's legal matter.

To enroll, attorneys must fill out this form:
<https://www.phillyvip.org/volunteer/virtual-consultation-volunteers/>.

Please contact Ery Cruz at icruz@phillyvip.org with any questions.

Stepping Up: How Companies Are Helping First Responders During the Pandemic

By Karmen Fox

When COVID-19 spread across the globe, medical workers traveled from afar to help their peers beleaguered by overcrowded and understaffed emergency rooms.

Unfortunately, many regions were not prepared for the pandemic and didn't have enough personal protective equipment (PPE) needed to shield essential workers from the contagion. Hospital staff were forced to fashion [masks out of bandanas](#) and [wear ski goggles](#) to stop the spread of the coronavirus.

With inadequate government resources further hampered by delays, dozens of companies stepped up, converting their production facilities to make PPE for first responders, from jean brands sewing medical masks to brewers making hand sanitizer.

ACC Docket reached out to the in-house counsel of companies that are helping the heroes on the front lines. Below, they share how they repurposed their supplies and skills to help stop the pandemic, and how you can galvanize your company to help too.

Alpargatas/Havaianas — José Daniello, Chairman of the Board of the Alpargatas Institute and Director of People

What processes did Havaianas use before that made reconverting possible? (i.e., what tools, goods, techniques, etc. has your company traditionally used that made this effort happen?)

Havaianas is one of Alpargatas' brands. As a global company, we set up a crisis committee at the beginning of the coronavirus issue in China. We designed several scenarios and prepared to adapt the operation if needed.

Administrative professionals are working from home all over the world. We shut down brick-and-mortar stores and

advised our franchisees to do the same. We reduced production to safe levels and reinforced the essential product line to avoid any bottlenecks.

Our factories have been adapted to churn out new products: masks, lab coats, and hospital footwear. We made a commitment to produce and donate one million masks. This number may increase if we are able to source more raw material.

We are also donating 250,000 pairs of shoes to the underprivileged and health-care professionals, the latter will receive a specific model for hospitals that we started to produce during the pandemic. In addition to footwear, 100,000 families will receive kits with essential products.

How are you balancing employee safety while ramping up production of equipment?

Since March 23, we have reduced the number of employees in logistics and production operations, reaching a minimum level and keeping only those who are essential, complying with health safety guidelines and rules. We are maintaining strict safety and social distancing standards in order to comply with the schedules and standards established in each region where we operate.

How does Havaianas ensure that it's complying with medical-grade sterilization techniques?

After all the adaptations that we promoted in our factories, we had an inspection from Anvisa, the regulatory organization that works with the Brazilian Government Healthy Ministry. They approved all the initiatives and changes in our production.

What internal stakeholders need to be involved to approve and implement these decisions?

The strategic committee, which includes the general counsel, is responsible to approve all the decisions.

How can in-house counsel who want to help during the pandemic get their stakeholders on board with implementing these decisions?

We have weekly lives streaming [calls] with all the employees to update the decisions, initiatives, and new processes during the coronavirus crisis.

In order to make it possible for individuals, such as employees and customers, to participate in helping the society, the Alpargatas Institute (IA), the company's social responsibility program, has created a fund. This fund will receive cash donations, which will be carefully recorded, and then converted into kits of essential products (e.g., hygiene products, food, and Havaianas) to be donated.

The kits are R\$15 and for each donated kit, the company will double the number of donations.

Lucky Brand — Maryn Miller, General Counsel

What processes did Lucky Brand use before that made reconverting possible? (i.e., what tools, goods, techniques, etc. has your company traditionally used that made this effort happen?)

As an apparel brand, it was fairly straightforward to pivot into non-medical cloth masks. Through our collaboration with LA City, we identified an appropriate pleated mask template, created by Kaiser Permanente and shared on [LAprotects.org](#).

With these tools and an existing apparel vendor base, we were able to identify a domestic vendor that was already sampling the same non-medical masks. Because we were flexible about fabric style choices, it allowed us to [produce our first 10,000 masks](#) within one and a half weeks. Since it was domestic production, we could deliver to our distribution center within four days.

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We have also partnered with other brands in The Open Innovation Coalition, led by Rothy's and including Fabletics, Marine Layer, Outerknown, and Thirdlove, among others. The purpose of the coalition is to gather others within our industry to information and resource share to factories currently producing protective equipment. The coalition has routed fabric and other supplies to [Suay Sew Shop](#), who are making a mask for medical and essential workers when there is a lack of N95s.

How are you balancing employee safety while ramping up production of equipment?

All of our corporate employees are working from home and have been sent cloth masks for their protection.

Our third-party distribution centers remain open and Lucky has given them the same masks to protect themselves at work. These distribution centers have also instituted social distancing measures on the floor for employee protection.

All of our stores are closed to the public, but 50 of approximately 200 are fulfilling online orders. While these store associates are working alone in store, they have also been given cloth masks to protect themselves going to and from stores.

In addition to sending all employees cloth masks, our human resources department has widely communicated information on social distancing measures and how to protect oneself.

The factory that produces our masks for sale is a contractor. All their employees have their temperature checked when they enter the building. They are aware of symptoms to look out for, are spaced properly to ensure social distancing, and wear masks and gloves at work.

What internal stakeholders need to be involved to approve and implement these decisions?

We have a crisis management team made up of the following positions:

- Chief financial officer and chief administrative officer
- VP Human Resources – Corporate and field

- Director, Loss Prevention and Corporate Security
- Director, OMNI operations and communications
- Director, facilities
- General counsel
- Chief technology officer
- Corp communications, HR program administrator
- CEO

How can in-house counsel who want to help during the pandemic get their stakeholders on board with implementing these decisions?

Stakeholders have been fully supportive of these decisions and are fully invested in efforts to help our community during this crisis, especially where the stakeholders see that the teams have thought through the legal, operational, and logistical considerations upfront.

How can the public support Lucky Brand's efforts?

Charitable donations are always a personal choice in both amount and recipient. At Lucky, we have offered our customers a few options to make an impact. They can purchase a five pack of masks and donate a five pack to our community partners and other beneficiaries recommend by the Los Angeles mayor's office.

Our [#LuckyTogether](#) page has information about how to donate directly to Suay Sew Shop, who are making masks for front line workers. This same page includes the donation pages of Lucky's community partners who service the unhoused in Los Angeles. Customers are welcome to choose how they want to participate and with who.

AB InBev — Cybelle Buyck, VP of Legal and Corporate Affairs

How is AB InBev helping the medical community during the pandemic?

We are a global company but strongly rooted in the local communities where we brew our beers, which is why we acted

quickly to support medical efforts in these communities.

As [medical] supplies shorten in the fight against COVID-19, our breweries are producing much-needed disinfectant alcohol and over one million bottles of hand sanitizer gel to distribute for free to hospitals and frontline workers in some of the most impacted areas.

We use the residual alcohol from the brewing process and work with excellent partners who complement our production capacity and determination to help with their expertise in making biocide products.

Additionally, in Belgium and the Netherlands, we are donating billboard space to support public health campaigns by FIFA and the World Health Organization (WHO), as well as the Dutch government.

We are also helping the medical community by donating water and non-alcoholic beers to hospitals and medical workers to support their work and show our appreciation. In some parts of the world, we are working with local authorities to build modular hospitals.

What processes did AB InBev use before that made reconverting possible? (i.e., what tools, goods, techniques, etc. has your company traditionally used that made this effort happen?)

We pride ourselves on being an agile company, able to act and react quickly. In order to produce disinfectant alcohol and hand sanitizers, we used our residual alcohol left over from de-alcoholising our non-alcoholic beers.

In addition, we reoriented multiple departments, such as procurement teams to purchase the packaging, our marketing team to develop the labels, our transport team to help with logistics, and our legal and corporate affairs teams to find the right places to distribute and cooperate with the governments' crisis coordination centers and hospitals.

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How are you balancing employee safety while ramping up production of equipment?

The health and safety of our people is our highest priority and we won't take any shortcuts in this area.

We have implemented a significant number of measures across our organization to ensure our colleagues have the support and resources that they need to stay safe and healthy. For instance, we proactively introduced enhanced cleaning cycles, social distancing measures, and entry-checks in many countries before they were mandated by the governments to safeguard our people.

Where we do produce hand sanitizer locally (e.g., in Germany or our small test brewery in Leuven, Belgium), in all circumstances, we ensure the strictest safety guidelines.

How does AB InBev ensure that it's complying with medical-grade sterilization techniques?

When we started the process to produce biocide products to help our communities, it was outside our comfort zone. We are brewers, not biocide producers. We started looking for experienced, fast-moving, and innovative partners who were familiar with the biocide regulatory framework.

Together with our partners, we were able to follow and adhere to the regulatory framework and in addition we received assistance from local governments and industry associations. Many governments made emergency exceptions in regards to obtaining biocide licenses and the European Union decided to release product standards free of charge, which has been a tremendous help.

How is AB InBev helping the public at large during this pandemic?

In addition to helping the public health sector, we are supporting our partners in the hospitality sector. As restaurants, bars, pubs, and clubs in many European countries have closed their doors, as part of government efforts to contain the

spread of COVID-19, we've acted quickly to support the hospitality sector.

In addition to offering deferred rent payments, free tap cleaning services, and keg restocks, our team has developed a series of online voucher platforms in Belgium, the United Kingdom, Italy and France, which allow individuals to pre-pay for beers in their favorite bar to redeem once reopened.

We've also pledged to match each donation, so pubs and bars get double the immediate cash injection. So far, almost 500,000 beers have been "prepaid."

In addition, we have also supported our local communities through donating laptops to support distance learning for children and young students.

What internal stakeholders need to be involved to approve and implement these decisions?

Helping to combat the effects of COVID-19 for our colleagues, customers, and communities has been a company-wide effort. All teams are involved and needed to implement decisions, ranging from our brewery teams to marketing, procurement, legal and corporate affairs, IT, and logistics colleagues.

We have an ongoing dialogue with our global senior leadership team but also operate as a European team to decide how best to support the communities we live and work in.

How can in-house counsel who want to help during the pandemic get their stakeholders on board with implementing these decisions?

In-house counsel have to radically prioritize time and resource to deliver workable solutions for rapid – and compliant – deployment of critical community support measures. Achieving that for each initiative means focusing on its specific legal challenges (e.g., permits for hand sanitizer) and covering compliance triggers.

At the same time, in-house counsel need to keep all stakeholders on the right path,

even in tumultuous times, through a consistent drumbeat of reminders on data protection, antitrust, anti-corruption, anti-fraud, and other compliance requirements.

Once it's clear that in-house counsel are on top of initiatives and retaining broader compliance control even in a crisis, stakeholders are confident to back novel measures to the fullest.

Operation BBQ Relief — David Rosen, General Counsel

Operation BBQ Relief has been helping communities affected by disasters across the United States since 2011. How does your team determine which areas to help?

Since 2011, Operation BBQ Relief has provided meals to those in need and to support first responders, military personnel, and veterans. As a 501(c)(3), our charitable mission is to provide comfort to those in need by connecting, inspiring, serving, and educating in communities far and wide. Whether it is in response to a natural disaster, or as is this case now, a pandemic, we are doing our best to respond and make a positive impact in as many communities as possible.

Through our new program, Operation Restaurant Relief, we empower a local restaurant to reopen and rehire formerly laid off employees while providing 2,500 free meals per day to their community. The Operation BBQ Relief programs department developed this program and implemented it within a few weeks, and the results thus far have been very successful.

What we need most of all is funding to activate in new areas. We rely heavily on our corporate sponsors and donors. Our COVID-19 deployments started in our hometown of Kansas City, and expanded to a Kansas City restaurant, South Carolina restaurant, then via the sponsorship of Dignity Health, we activated a restaurant in Bakersfield, CA.

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The Pennsylvania Department of Health Services contracted us to feed 180,000 meals per week in conjunction with The Salvation Army. We understand the need at this time is far and wide, and we are trying our best to help in as many places as possible. We hope to work with corporations ready to deploy our resources in their local community to feed those in need and get seven to 10 employees working again at each restaurant.

How is Operation BBQ Relief helping medical, first responders, or other essential workers during the coronavirus pandemic?

They have been one of Operation BBQ Relief's targeted beneficiary groups. Our restaurant contractors have been delivering meals to their facilities.

How has Operation BBQ Relief helped other community members during this pandemic?

Operation BBQ Relief understands the comfort a hot meal brings to both the body and soul. Through Operation Restaurant Relief, we are providing that comfort to those in need, first responders, and other front-liners. The added benefit

is the reemployment of previously laid off employees at our restaurant contractors.

How is Operation BBQ Relief ensuring the safety and health of its chefs and volunteers during the pandemic?

Operation BBQ Relief is committed to following all US federal, state, and Center for Disease Control (CDC) guidelines, with relation to all laws, rules, and regulations. During this crisis, we have continuously updated our standard operating procedures and policies to reflect the changing guidelines.

We have implemented many new operational protocols governing mask usage, gloves, mandatory glove changes, sanitization of all hard surfaces every 30 minutes, checking the temperature of incoming people and then again randomly throughout the day, and many other [rules].

What internal stakeholders need to be involved to approve and implement these decisions?

The Operation BBQ Relief programs department evaluates potential deployment sites and then the CEO with input

from the management team makes the final determination.

How can in-house counsel who want to help during the pandemic get their stakeholders on board with implementing these decisions?

Operation BBQ Relief is actively looking for corporate partners and donors that want to make a positive impact in their local communities. Please share this information with decision makers within your corporate foundation, corporate social responsibility department, marketing department, and the executives.

How can the public support Operation BBQ Relief efforts (aka deployments)?

Please visit www.obr.org to get involved and become a registered volunteer or make a donation.

For more advice on the coronavirus pandemic, visit our [Coronavirus Response Resource Page](#).

Author:

Karmen Fox is the web content editor of ACC Docket.

ACC News

2020 ACC Annual Meeting: It. Is. Happening.

Mark your calendars for October 13-16. For the first time, ACC Annual Meeting will be taking place in-person in Philadelphia, as well as virtually. Reserve your spot today at acc.com/annualmeeting.

In-house Counsel Certified (ICC) Designation

The [ACC In-house Counsel Certification Program](#), helps in-house counsel become proficient in the essential skills identified as critical to an in-house legal career. The program includes live instruction, hands-on experience, and a final assessment. Those who successfully complete the program will earn the elite ICC credential. Your law department and your employer will benefit from having a lawyer that returns with global best practices in providing effective and efficient legal

counsel. Attend one of these upcoming programs:

- Melbourne, Australia (Virtual), August 10-14
- Alexandria, VA, November 16-19

Drive Success with Business Education for In-house Counsel

To become a trusted advisor for business executives, it's imperative for in-house counsel to understand the business operations of your company. Attend business education courses offered by ACC and the Boston University Questrom School of Business to learn critical business disciplines and earn valuable CLE credits:

- September 22-24, and November 17-19

Learn more and register at acc.com/BU.

Are you prepared to comply with new state privacy laws?

Rapidly growing data privacy regulations from California to New York make you accountable for all third-party service providers that access, process, or store your company's personal data. Visit www.acc.com/VRS for more information.

New ACC Report Shows the Value of Legal Operations

One of the most comprehensive reports of its kind, the [2020 ACC Legal Operations Maturity Benchmarking Report](#), created in partnership with Wolters Kluwer Legal & Regulatory, analyzes data for 316 legal departments of all sizes, across 29 countries, and 24 industries. Quickly assess how your department rates and develop a roadmap to improve critical functions. [Download this complimentary report now.](#)

75 ACC Greater Philadelphia Members Gottahava Wawa®



On January 14th 75 members of ACC Greater Philadelphia descended on the new Corporate Headquarters of Wawa in Wawa, Pennsylvania, just outside of Philadelphia. The occasion was an ACC Greater Philadelphia program that was meant to showcase ACC Greater Philadelphia member companies.

The program began with a one-hour presentation by Lawyers Concerned for Lawyers of Pennsylvania, Inc. (LCL) focusing on the need to get confidential and compassionate help to lawyers and their families struggling with substance use and mental health disorders. Laurie Besden, Executive Director and Brian Quinn, Education and Outreach Coordinator, both lawyers themselves, shared their personal struggles and how LCL stepped in to literally save their lives.

The program thereafter was all Wawa. Wawa, Inc., a privately held company, began in 1803 as an iron foundry in New Jersey. Toward the end of the 19th Century, owner George Wood took an interest in dairy farming and the family began a small processing plant in Wawa, PA, in 1902. As home delivery of milk declined in the early 1960s, Grahame Wood, George's grandson, opened the first Wawa Food Market in 1964 as an outlet for dairy products. Today, Wawa is your all day, every day stop for fresh, built-to-order foods, beverages, coffee, fuel services, and surcharge-free ATMs. A chain of

more than 850 convenience retail stores (over 600 offering gasoline), Wawa stores are located in Pennsylvania, New Jersey, Delaware, Maryland, Virginia, Florida, and Washington, D.C.

Members received tours of the Wawa Test Kitchen and their Innovation and Design Center, where new Wawa food and related equipment is tested and eventually approved for use in their stores. The program culminated in a half hour roundtable discussion with Mike Eckhardt, General Counsel, Maria Kalogredis, Deputy General Counsel and Tara Gibbons, Senior Legal Counsel who shared facts about Wawa's business and Legal Team with an appreciative audience and openly discussed how Wawa handles such things as employment matters, use of internal and external legal resources to support the business, intellectual property concerns, and opportunities for all corporate associates, including members of the Legal Team, to work in the stores to gain grass roots knowledge of how the stores actually operate.

The Greater Philadelphia Chapter acknowledges Wawa with much appreciation for opening their headquarters to 75 happy members and plans on showcasing additional member companies later in the year.



Accused Patent Infringers Have Been Having Their Cake and Eating It Too . . . Until Now

By Rubén H. Muñoz, Partner & Jonathan James Underwood, Counsel, at Akin Gump Strauss Hauer & Feld LLP



I. Introduction

On September 16, 2012, the America Invents Act brought to life a speedier and cheaper mechanism to challenge patents: *inter partes* review (IPR) proceedings at the Patent Office. Even though IPR challenges are limited to anticipation or obviousness grounds based solely on prior art patents or printed



publications, the popularity of these proceedings is undeniable. To date, more than 10,000 IPR petitions have been filed, causing nothing short of a seismic shift in the U.S. patent litigation landscape. By design, the IPR statute (35 U.S.C. § 311 et seq.) contains an estoppel provision that prevents the petitioner (patent challenger) from subsequently pursuing a duplicative approach in district court. Under the statute, a petitioner who has received a final written decision in an IPR may not assert that a challenged patent claim is invalid on any ground that the petitioner raised or reasonably could have raised during the IPR. Because of the limited scope of IPRs, accused infringers have argued that the statute contemplates the pursuit of anticipation or obviousness theories that are immune from IPR estoppel if those theories are based on, for example, a prior art physical product. On the other hand, patent owners have contended that estoppel should apply to a product to prevent petitioners from gaming the system. Despite district courts having clear differences of opinion on this issue, no court had applied estoppel to a product until the District of Delaware did so on January 14, 2020. For now, and until the Court of Appeals for the Federal

Circuit—the appellate court with exclusive jurisdiction over patent matters—resolves this issue, patent litigants must be wary of how competing approaches by district courts may impact the availability of invalidity defenses.

II. Showing that estoppel applies

IPR estoppel applies to any patent or printed publication that a petitioner actually knew about or “that could have been found by a skilled searcher’s diligent search.” A patent owner bears the burden of showing that estoppel applies, and can meet this burden by identifying the search string and the source of the prior art, and evidence of why a diligent search would include such criteria.ⁱ One court has applied estoppel based on a third party’s IPR petition, reasoning that the petition demonstrated that a skilled searcher could be reasonably expected to discover the documents in question.ⁱⁱ

III. District court decisions

Several courts have ruled that the IPR estoppel provision is narrow and exclusively applies to patents and printed publications. For example, one court explained that because the defendants “could not have raised prior art systems, such as products and software, during IPR proceedings,” estoppel did not apply to those invalidity defenses.ⁱⁱⁱ Recently, another court allowed a defendant to proceed with obviousness combinations that included prior art off-road vehicles, even though the manuals for those vehicles could have been raised in the IPR.^{iv}

Conversely, other courts have raised concerns about the potential for an accused infringer to game the system. Some decisions indicate that the court might estop an invalidity defense based on a product under certain circumstances. Those courts analyzed the differences between the product and the printed publication. One court explained that because the product was a “superior and separate

reference” to the product’s instruction manual, estoppel did not apply.^v The court rejected the patent owner’s argument that there was “no reasonable distinction between the actual use of the device itself and a manual which demonstrates” its use. The court explained that the manual lacked relevant details that an inspection of the product could reveal. Another court applied the same test, and found that a product was not estopped even though photographs of it had been printed in a magazine.^{vi} The court ruled that estoppel did not apply because the magazine did not show the product in sufficient detail to show its relevant features.

Several decisions caution that a party cannot simply dress up a printed publication as a product to avoid estoppel.^{vii} Those decisions explain that the court will look carefully at how the defendant uses the product and accompanying documents in its invalidity arguments to assess whether the defendant is merely swapping labels. However, for a variety of reasons, those courts did not squarely decide whether a product was merely a dressed-up publication. For example, despite a defendant’s argument that it was asserting a product in an invalidity defense, the court found that the defense was actually premised on the product’s datasheet.^{viii} Another court did not reach the issue because the patent owner failed to present evidence showing that the defendant had access to a sufficiently detailed printed publication to raise in the IPR.^{ix}

At the time of this writing, one court has recently applied estoppel to a product by considering the substantive differences between the product and a printed publication that could have been raised in an IPR.^x The court began by explaining that the IPR statute distinguishes between the grounds that may be raised (under §§ 102 and 103) and the evidence that can be used to support those grounds (patents

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and printed publications). The court then found that the product that the defendant wished to assert in its obviousness defense was “materially identical (i.e., disclose[d] the same claim elements)” to a publication that reasonably could have been raised in the IPR. As such, the court ruled that the ground reasonably could have been raised, thus the obviousness defense was estopped.

IV. Future

Appellate review of many decisions has so far been foreclosed by stipulated dismissals at the district court or voluntary dismissals on appeal. Until the Federal Circuit resolves these issues, litigants should pay close attention to prior rulings by their forum district. If a patent owner is able to sue in several districts,

it should consider whether one district might be more amenable to applying estoppel to a product. Conversely, an accused infringer should consider the likelihood that estoppel will apply to a product in the event of a failed IPR challenge that reached final written decision, and focus on how to pursue and present invalidity defenses in court.

ⁱClearlamp, LLC v. LKQ Corp., No. 12-cv-2533, 2016 WL 4734389 (N.D. Ill. Mar. 18, 2016).

ⁱⁱIronburg Inventions Ltd. v. Valve Corp., No. 17-cv-1182, 2019 WL 5862790 (W.D. Wash. Nov. 8, 2019).

ⁱⁱⁱZitovault, LLC v. IBM Corp., No. 16-cv-0962, 2018 WL 2971178 (N.D. Tex. Apr. 4, 2018).

^{iv}Polaris Indus., Inc. v. Arctic Cat Inc., No. 15-cv-4475, 2019 WL 3824255 (D. Minn. Aug. 15, 2019).

^vStar Envirotech, Inc. v. Redline Detection, LLC, No. 12-cv-01861, 2015 WL 4744394 (C.D. Cal. Jan. 29, 2015).

^{vi}SRAM, LLC v. RFE Holding (Canada) Corp., No. 15-cv-11362, slip op. at 11-12 (N.D. Ill. Jan. 25, 2019).

^{vii}Cal. Inst. of Tech. v. Broadcom Ltd., No. 16-cv-03714 (C.D. Cal. Aug. 9, 2019).

^{viii}Clearlamp.

^{ix}Oil-Dri Corp. of Am. v. Nestle Purina Petcare Co., No. 15-cv-1067, 2019 WL 861394 (N.D. Ill. Feb. 22, 2019).

^xWasica Fin. GmbH v. Schrader Int'l, Inc., No. 13-cv-1353, 2020 U.S. Dist. LEXIS 9699 (D. Del. Jan. 14, 2020).



**Laura
Bautista**

Member Spotlight

ACC Greater Philadelphia 2020Q2 Newsletter Member Spotlight Q&A

1. In what year did you start in your current position?

I started in my position at Vanguard in 2017. I am currently an associate counsel on the Funds, Finance, and Governance team.

2. In what year did you first work in-house?

I transitioned from a law firm to working in-house in 2015. My first in-house role was with the General Counsel's office at Marquette University.

3. What law school did you attend?

I attended law school at Marquette University in Milwaukee, Wisconsin.

4. Where did you attend college and graduate school? What degrees do you hold?

I received my undergraduate degree from Marquette University (See a theme here?) in Mathematics and Criminology. Most recently, I received my MBA from Temple University.

5. What do you consider to be your most pivotal career move?

I would probably say that it was the decision to accept my role at Vanguard. I had been working in-house at Marquette covering a number of practices areas—IP, Tax, Real Estate, Sports, Political, Trusts and Estates, and general Corporate Law. The decision to join Vanguard meant that I would go back to practicing Securities Law (which I had done at the law firm and missed) and would be leaving a role teaching at Marquette's Law School (which I had wanted to do since being a student there). But it also meant a lot more. We had just bought a house in Wisconsin, we would be leaving our close group of friends, my husband would need

to leave his dream job, we didn't have any family in the immediate area, and we didn't even know anyone out here. But we decided it was an opportunity for me to join the world's largest mutual fund complex, so I took a leap of faith. We figured, if nothing else, it would make life a little more adventurous.

6. What's the best thing about your current job?

Without a doubt, the best thing about my current job is my colleagues. Being a Midwesterner, I was worried about the perceived “gruff” nature of people from the East Coast. However, I was pleasantly surprised, both in and outside of work, when I moved to Pennsylvania. Since we spend the majority of our days with our colleagues, I think it is so important that we have good working relationships. My colleagues are friendly, kind, and funny, and the culture at Vanguard represents those character traits. They have certainly been a large factor in making my transition to Vanguard and to Pennsylvania very smooth.

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7. What's the worst job you've ever had?

The day that I turned 14, I had a job. My mom, who was a high school teacher, had helped (although, I don't think I really had a choice) me secure a position at the indoor pool at her high school. Everyone else who worked there went to school together, and I didn't know anyone or even what my job was when I walked in the door. Not to mention that the pool was a 20 minute drive from our house and, since I was only 14, I had to ride my bike there and back. Because I was too young to lifeguard, I had to start out as a locker room attendant. This role meant I sat in a classroom-style desk in the corner of the locker room and made sure no funny business went on in there, all while trying not to look like too much of a creep.

8. What's the most valuable life lesson you still apply today?

Work hard and be nice to everyone you meet. If you work hard, you will be able to look back, be proud of your accomplishments, and simultaneously recognize where you need to lean on others for support. Be nice to everyone because it is the right thing to do. If that mentality doesn't work for you, be nice to everyone because the world is a small place.

9. What do you consider to be the best thing about ACC membership?

There are a lot of great things about ACC membership! The quality and quantity of CLEs alone are enough to justify an ACC membership. Additionally, the networking events are always a lot of fun. Plus, because they're hosted at throughout the city, they

are a great way to see different local venues (During one event, we actually got to walk through the Eagles' locker room!). Finally, it's a great community of very talented people willing to share diverse perspectives.

10. How do you achieve work/life balance?

I have actually come to dislike the phrase work/life balance. To me, the word balance conveys some ability to make each aspect of life plentiful at the same time. In my opinion, there isn't balance. Instead, it's more like a seesaw. If you give more in one area, you're going to lose something in another area. For example, some days I feel like I'm a better employee, but it's at the expense of being an okay mom for that day. Other days I feel like I'm a stellar mom, but it's because I did nothing to help out around the house that day. I think that the key is to set boundaries, acknowledge that you can't always do everything or be everything to everyone, and be kind to yourself when you inevitably allocate more time to one aspect of life than another for that day. The seesaw will certainly move.

11. If I were not practicing law, I'd...

I'd most likely be a teacher. But there is a list of other options too: run a nonprofit, own a coffee shop, run a food tour company, own a bed and breakfast, volunteer throughout the city, flip houses, tutor kids, own a yoga studio, or try a combination of any of the above.

12. My favorite vacation spot is...

In the U.S., my favorite vacation spot is Colorado. I have always loved skiing out

there and enjoy the local demeanor, sunshine, and focus on active and healthy lifestyles. Outside of the U.S., I'd select France. French croissants are dangerously good, the shopping is excellent, the wine is even better, and you can have completely different vacations from one city to the next.

13. A place I've never been but would most like to visit is...

Cape Town, South Africa. All of the pictures I've seen are just breathtaking. Plus, you have mountains and the ocean.

14. My all-time favorite movie is...

I am really bad at remembering movie titles and actor names, and I don't typically like watching movies more than once so this is a strangely hard question for me. My gut reaction is to go with 21 Jump Street. Go ahead and laugh.

15. Even people who know me might be surprised to learn that...

I really wish I could sing. My mom has this beautiful voice, and I can barely hum in tune. I would also like to relearn how to play the piano. I gave up on it when I was young—probably because I've never been musically inclined—but I just think it's such a beautiful instrument.

16. If applicable, please tell us about your pet(s):

We don't have any right now. Although, I'm afraid I'm going to be outnumbered on that decision at some point.

Upcoming ACCGP Events

Visit [ACC Greater Philadelphia](#) for the most current event details or to register for chapter events.

JUNE

JUNE 16

VIRTUAL Intellectual Property Roundtable
PTAB Forum: IPRs, PGRs, and CBMs - Pointers and Perplexities

JUNE 23

VIRTUAL Employment & Labor Roundtable
Pennsylvania vs. New Jersey: Which Law Is Worse For Employers?

JULY

JULY 7 & 8

VIRTUAL Contracts & Commercial Law CLE Institute

JULY 28 & 29

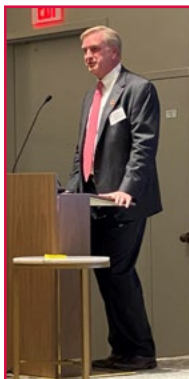
SAVE THESE DATES for Our First Virtual In-house Counsel Conference!

Be on the lookout for calendar updates!

**MYC
Networking
Reception
@ Creed's**
February 25, 2020



**Delaware
Legal Hot
Topics CLE
@ Chemours**
February 6, 2020



Ski & CLE @ Bear Creek Mountain

January 30, 2020



Lawyers Concerned for Lawyers & Wawa Kitchen Tour

January 14, 2020



**Holiday Party
& Board
Installation @
Racquet Club**
December 12, 2019



**Ethics Follies
@ AMC Theatre**
December 12, 2019



Meet Your Counterparts @ Gran Caffè L'Aquila

November 21, 2019



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